

The Honorable James L. Robart

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

MICROSOFT CORPORATION, a Washington
corporation,

Plaintiff,

v.

MOTOROLA, INC., and MOTOROLA
MOBILITY LLC, and GENERAL
INSTRUMENT CORPORATION,

Defendants.

CASE NO. C10-1822-JLR

DEFENDANTS' MOTION TO FILE
DOCUMENTS UNDER SEAL IN
SUPPORT OF MOTOROLA'S MOTION
TO PRECLUDE MICROSOFT FROM
RELYING ON NEW DAMAGES
THEORIES

**NOTE ON MOTION CALENDAR:
Friday, May 10, 2013**

I. INTRODUCTION

Pursuant to Western District of Washington Civil Local Rule CR 5(g)(2), Defendants Motorola, Inc. (now Motorola Solutions, Inc.), Motorola Mobility, LLC, and General Instrument Corporation (collectively "Motorola") respectfully move this Court for leave to file under seal the following:

1. Exhibit I to the Declaration of Andrea Pallios Roberts in Support of Motorola's Motion to Preclude Microsoft From Relying on New Damages Theories.

II. BACKGROUND

Microsoft Corporation ("Microsoft") and Motorola entered into a stipulated Protective Order, which was approved by the Court on July 21, 2011. (Dkt. No. 72.) This Protective Order

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4828-0029-6979.1

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1 outlines categories of material that should be maintained in confidence, along with procedures for
 2 sealing confidential material when included in documents filed with the Court. Specifically,
 3 paragraph 1 specifies that:

4 Confidential Business Information is information which has not been made public
 5 and which concerns or relates to the trade secrets ... amount or source of any
 6 income, profits, losses, or expenditures of any person, firm, partnership,
 7 corporation, or other organization, the disclosure of which information is likely to
 have the effect of causing substantial harm to the competitive position of the
 person, firm, partnership, corporation, or other organization from which the
 information was obtained....

8 *Id.* at 1-2. This information should be marked as “CONFIDENTIAL BUSINESS
 9 INFORMATION, SUBJECT TO PROTECTIVE ORDER.” *Id.* at 2. Additionally, paragraph 6
 10 specifies that:

11 (1) Confidential Business Information pertaining to licensing or other
 12 commercially sensitive financial information shall not be made available under
 13 this paragraph 6 to such designated in-house counsel; the supplier shall designate
 14 such Confidential Business Information pertaining to licensing or other
 15 commercially sensitive financial information as “[SUPPLIER’S NAME]
 CONFIDENTIAL FINANCIAL INFORMATION – OUTSIDE ATTORNEYS’
 EYES ONLY – SUBJECT TO PROTECTIVE ORDER” and promptly provide a
 redacted version of such document that may be disseminated to the two in-house
 counsel designated under this paragraph 6....

16 *Id.* at 4. Finally, Paragraph 2 of the Protective Order governs the sealing of documents, and states
 17 in relevant part that:

18 During the pre-trial phase of this action, such information, whether submitted in
 19 writing or in oral testimony, shall be disclosed only *in camera* before the Court
 20 and shall be filed only under seal, pursuant to Rule 5(g) of the Local Civil Rules
 of the United States District Court for the Western District of Washington.

21 *Id.* at 2.

22 Thus, the Protective Order provides that Motorola may request to seal documents by
 23 formal motion pursuant to Rule 5(g) of the Local Civil Rules of the Western District of
 24 Washington. Local Rule CR 5(g)(3) states that:

25 If a party seeks to have documents filed under seal and no prior order in the case
 26 or statute specifically permits it, the party must obtain authorization to do so by
 filing a motion to seal or a stipulation and proposed order requesting permission
 to file specific documents under seal. The court will allow parties to file entire
 memoranda under seal only in rare circumstances. A motion or stipulation to seal

usually should not itself be filed under seal. A declaration or exhibit filed in support of the motion to seal may be filed under seal if necessary. If possible, a party should protect sensitive information by redacting documents rather than seeking to file them under seal. A motion or stipulation to seal should include an explanation of why redaction is not feasible.

Similarly, federal law recognizes that courts should protect trade secrets or other confidential commercial information by reasonable means, permitting the filing under seal of documents containing such information. *See* Fed. R. Civ. P. 26(c)(1)(G) and (H) (stating that a court may require that (1) “a trade secret or other confidential research, development, or commercial information not be revealed or be revealed only in a specified way” and (2) “the parties simultaneously file specified documents or information in sealed envelopes...”).

Though courts recognize a general right to inspect and copy public records and documents, including judicial records, the United States Supreme Court has stated that this right is limited. “[T]he right to inspect and copy judicial records is not absolute. Every court has supervisory power over its own records and files, and access has been denied where court files might have become a vehicle for improper purposes.” *Nixon v. Warner Commc’ns, Inc.*, 435 U.S. 589, 598 (1978). In discussing examples of improper purposes, the Court indicated that courts are not to serve as “sources of business information that might harm a litigant’s competitive standing.” *Id.*

As the Ninth Circuit stated:

The law, however, gives district courts broad latitude to grant protective orders to prevent disclosure of materials for many types of information, including, but not limited to, trade secrets or other confidential research, development, or commercial information. *See* Fed. R. Civ. P. 26(c)(7). Rule 26(c) authorizes the district court to issue “any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden.” The Supreme Court has interpreted this language as conferring “broad discretion on the trial court to decide when a protective order is appropriate and what degree of protection is required.” *Seattle Times Co. v. Rhinehart*, 467 U.S. 20, 36 (1984).

Phillips v. General Motors Corp., 307 F.3d 1206, 1211 (9th Cir. 2002).

III. THE PROTECTIVE ORDER BOTH PERMITS AND REQUIRES MOTOROLA TO FILE THIS MOTION FOR LEAVE TO SEAL

In accordance with the Protective Order and the above-referenced authority, Motorola moves to file Exhibit I to the Declaration of Andrea Pallios Roberts in Support of Motorola’s

1 Motion to Preclude Microsoft From Relying on New Damages Theories. This document is
2 Microsoft Corporation's April 12, 2013 Supplemental Disclosures Pursuant to Federal Rule of
3 Civil Procedure 26(a)(1)(A)(i) and (iii). Microsoft served this document on Motorola bearing the
4 designation "MICROSOFT CONFIDENTIAL FINANCIAL INFORMATION – OUTSIDE
5 ATTORNEYS' EYES ONLY – SUBJECT TO PROTECTIVE ORDER." This document
6 purports to set forth Microsoft's computation of damages. Exhibit I should accordingly be sealed.

7 **IV. CONCLUSION**

8 For the foregoing reasons, Motorola respectfully requests that this Court order that the
9 following document be filed under seal:

- 10 1. Exhibit I to the Declaration of Andrea Pallios Roberts in Support of Motorola's
11 Motion to Preclude Microsoft From Relying on New Damages Theories

12 DATED this 1st day of May, 2013.

13
14 Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this day I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

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DATED this 1st day of May, 2013.

/s/ Marcia A. Ripley

Marcia A. Ripley